OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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ATTORNEY GENERAL

June 4, 2013

By Electronic and U.S. Mail
Wendy Macias
United States Department of Education
1990 K Street NW., Room 8017
Washington, DC 20006

Re: 34 CFR Chapter VI, Docket ID ED-2012-OPE-0008, Negotiated Rulemaking Committee; Public Hearings

Dear Ms. Macias:

We write in response to the notice of intent to establish negotiated rulemaking committee ("Notice") as published in the Federal Register on April 16, 2013. These comments supplement the comments we made at the public hearing in Minneapolis on May 23, 2013.

As the chief consumer advocacy agency in Illinois, our office handles hundreds of complaints concerning higher education and we enforce laws to protect consumers from unfair and deceptive practices perpetrated by higher education providers. Our comments primarily reflect insights we have gained through our frequent interactions with current and former students who have filed complaints with our office. To date, we have received more than 1,500 complaints about Illinois colleges and universities and have interviewed scores of students to learn more about their experiences. Additionally, our investigation of the for-profit school industry has yielded broader policy lessons that may be useful as the Department of Education ("the Department") shapes its rulemaking agenda.

We have carefully reviewed the proposed topics for consideration and wish to comment on one topic—gainful employment regulations—that we believe is of particular importance to Illinois consumers. Additionally, we encourage the Department to address three other topics that were not referenced in the Notice: cohort default rates, institutional loans, and loan disbursement delays. We believe that strong rules in these areas would protect taxpayer investment, aid

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consumers in making informed choices, and level the playing field for career schools that are delivering for their students and the public in the intensely competitive educational marketplace.

I. Gainful Employment Topics

Debt-to-Income Ratios and Repayment Rates

To Better Serve both Students and Taxpayers, Career Programs Should Be Required to Meet Thresholds for Debt-to-Income Ratios and Repayment Rates

A robust Gainful Employment rule is vital to protect taxpayer investment and to ensure that students have adequate and reliable information when they enroll in a career program. We recommend adoption of a rule that sets thresholds for repayment rates and debt-to-income ratios and requires disclosure of these figures to prospective students. If career programs fail to meet these thresholds or fail to accurately disclose repayment rates and debt-to-income ratios, they should lose eligibility for federal funds.

Debt-to-income ratios provide prospective students with a vital snapshot into graduates' ability to repay their loans. We have spoken to numerous career college graduates who find that their earnings are lower and debt burden higher than what they expected when they enrolled. Had they been given debt-to-income disclosures when they were shopping for schools, they could have made more informed decisions before incurring significant debt. We encourage the Department, therefore, to again promulgate rules that set maximum thresholds for debt-to-income ratios. Programs in which a majority of graduates do not have loans—such as at community colleges—can be deemed to have met these thresholds.

Prospective students should also be entitled to information about loan repayment rates, which indicate whether a program's graduates are in careers that allow them to cover the cost of their education. Though cohort default rates were intended to provide similar information, these statistics—for reasons discussed below—do not provide prospective students with a realistic view of how well programs will prepare them for success after graduation.

Repayment rates are a vital complement to debt-to-income ratios because they can, and should, account not only for graduates but also for students who drop out. According to a report prepared by The Education Trust, *Subprime Opportunity*, only 22 percent of first-time, full-time bachelor's degree students who enrolled in 2002 at for-profit colleges graduated within six years.[1] Nevertheless, drop-outs are generally responsible for some or all of the student debt they incurred while in school. Prospective students need to be given a full picture of their chances of repaying their student loans. If a program has a 90 percent repayment rate for graduates but only a 20 percent completion rate, that program is not delivering for a majority of its students. The repayment rate, therefore, is a strong indicator of a program's success in preparing its students for gainful employment; if the rate falls below a certain threshold, that program should lose its eligibility for Title IV funds.

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[1] Jose L. Cruz, , Jennifer Engle, and Mamie Lynch, *Subprime Opportunity: The Unfulfilled Promise of For-Profit Colleges and Universities*, The Education Trust (November 2010), *available at* http://www.edtrust.org/sites/edtrust.org/files/publications/files/Subprime_report_1.pdf.

Finally, because of the importance of these figures to students and taxpayers, programs should be accountable for both debt-to-income and repayment thresholds. Failure to meet either should lead to loss of Title IV eligibility. Similarly, the failure to accurately disclose repayment rates and debt-to-income ratios should also result in a loss of eligibility for federal funds.

Placement Rates

Students Should Be Given Clear and Accurate Disclosures About the Percentage of Career Program Graduates Employed in Their Field of Study

As prospective students research career programs, they should be given accurate and timely disclosures about graduate employment outcomes. Unfortunately, we have found that much of the current placement information provided to students is based on misleading or manipulated data. We have observed practices including one-day field trips being counted as placements, extremely liberal definitions of "in-field employment," and inducements to students to report themselves as self-employed. And these practices are not unique to Illinois; in one example uncovered in New York, Career Education Corporation set up one-day "job fairs" for its students and then reported these students as employed to the company's accreditors and to the public.[2]

We have also spoken to dozens of students who were orally promised high salaries, 99 percent job placement rates, or high passage rates on required licensure exams. Many of these students enrolled in reliance on these promises only to discover, upon graduation, that their career prospects were far worse than what they were promised.

To mitigate oral and written misrepresentations about job placement, we recommend that the Department require clear placement disclosures that are based on a uniform definition of "in-field" employment. This definition should exclude graduates who are self-employed with little or no income, graduates in temporary jobs, and graduates "placed" in the same job as what they held prior to enrollment. Further, the Department should require disclosure of average and median salaries, along with percentile breakdowns, so that students have realistic expectations about how much they can earn if they graduate. To ensure accuracy, job placement calculations should be available to independent auditors.

Just as with Gainful Employment, we also recommend that the Department set a minimum threshold for placement rates. Programs that cannot prepare their graduates for employment in their fields of study should not receive taxpayer money.

Accreditor "Shopping"

Career Schools Should Not Be Able to Switch Accreditors in Order to Avoid Accountability for Poor Practices

If national accreditors suspect violations of their guidelines, they will order schools to demonstrate compliance or face a loss of accreditation. When they are issued such an order, we have seen schools react in three ways: 1) improve their practices; 2) conduct a "teach-out" and

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[2] *See generally* Kelly Field, *Job Placement Problems Could Cost Some Career Education Colleges Their Accreditation*, The Chronicle of Higher Education (November 21, 2011), *available at* http://chronicle.com/article/Job-Placement-Problems-Could/129862/.

shut down the campus; or 3) switch accreditors and begin with a clean slate. The first option is appropriate. The second is problematic in that the institution may simply open a new campus elsewhere, but at least the low-performing campus has been closed. The third option, however, is most troubling, as it provides schools with yet another way to evade accountability for poor and/or fraudulent practices. Accordingly, we encourage the Department to promulgate rules that protect the integrity of the accreditation process by preventing accreditor "shopping."

Programmatic Accreditation Misrepresentations

Students Are Entitled to Clear Disclosures about a Career School's Programmatic Accreditation

In addition to institutional accreditation, many career schools seek programmatic accreditation for specific programs of study. For example, In Illinois, some employers require medical assistants to have formal training and certification as a Certified Medical Assistant ("CMA"). While a variety of post-secondary institutions offer medical assistant programs, only graduates from medical assistant programs with programmatic accreditation by The Commission on Accreditation of Allied Health Education Programs ("CAAHEP") or the Accreditation Bureau of Health Education Schools ("ABHES") may sit for the American Association of Medical Assistant's ("AAMA") Certified Medical Assistant exam and become a Certified Medical Assistant.

We have seen schools set up their Office of Postsecondary Education Identification ("OPEID") code in such a way that would inhibit a reasonable consumer from discovering whether a graduate of the school would be eligible to take the CMA Exam. Specifically, these schools will group programmatically-accredited campuses and non-programmatically accredited campuses in the same OPEID, allowing the schools to publish accreditation disclosures that cover all campuses. As a result, we have seen disclosures that list ABHES or CAAHEP as an accreditor even when some of the campuses in the OPEID are <u>not</u> accredited by those bodies. This practice likely confuses students who are looking for an ABHES- or CAAHEP- accredited program. We have spoken to a number of graduates who were surprised to learn that they could not become Certified Medical Assistants with the diplomas they had obtained, or learned that they had unknowingly transferred from a programmatically accredited program to one that is not.

We encourage the Department to promulgate clear rules about how schools address situations in which certain campuses in their OPEID contain different programmatic accreditations than others. This may involve requiring separate disclosures, affirmative representations about the schools' programmatic accreditation, or random recording of recruitment meetings to ensure that prospective students are not being misled about accreditation. Regardless of the form the rules take, the goal should be to ensure that students receive clear disclosures about programmatic accreditation prior to enrolling.

II. Other Topics

Cohort Default Rate Manipulation

Students Should Be Given Accurate Information About Cohort Default Rates

As discussed above, we believe that career schools should be accountable for the success of their graduates, particularly when these schools represent to prospective students that their programs will lead to better jobs and higher salaries. One vital measure of schools' success is their cohort default rate, as defined in Section 435(m) of the Higher Education Act.[3] An accurate measure of cohort default rates—alongside the measures discussed above—will give prospective students better information about the chances of being able cover the cost of their education.

Many for-profit institutions have evaded the intentions of Congress and the Department by aggressively soliciting students to seek forbearances and deferments so that they are not accounted for in the Department's measurement. The recent "For Profit Higher Education: The Failure to Safeguard the Federal Investment and Ensure Student Success" report released by the Senate Committee on Health, Education, Labor, and Pensions ("HELP Committee Report") detailed the troubling ways in which for-profit schools have manipulated their default rates, including repeated phone calls to separated students, aggressive mailings, home visits, and bonuses for default management employees who can secure the most "cures." In one instance documented by the HELP Committee, a for-profit school offered students McDonald's gift cards if they contacted the company's default management department.[4]

We believe that, but for this manipulation, many for-profit schools would have cohort default rates well above the statutory limit. One way to measure this is to compare default rates on schools' institutional loans—which are not tracked by the Department—with default rates on Title IV loans. Because institutional loans are intended only to cover the gap between available federal funds and the cost of tuition, institutional loans are generally far smaller than federal loans and thus, if anything, are likely to have a smaller default rate than on federal loans.[5]

Unfortunately, schools do not generally publish default rates for their institutional loans (a matter discussed below), but experts have estimated that these default rates can exceed 50 percent. For example, the HELP Committee Report, analyzing public filings, estimates that Corinthian Colleges' proprietary loans carry a default rate of 55 percent.[6] This contrasts sharply with the company's expected two-year default rate on federal loans of 6.7 percent for the 2010 cohort.[7]

It is important to emphasize that the HELP Committee's estimate is merely that; there is no public disclosure of default rates on institutional loans, so presently the comparison between federal and institutional loan defaults is imperfect. However, when the estimated default rate for institutional loans is more than eight times the rate for federal loans, it becomes apparent that the

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[3] 20 USC §1085 (a)(3).
[4] S. Prt. No. 112-37, Vol II, at 425 (2012).
[5] Bankruptcy is not a variable here as neither federal nor institutional loans are generally dischargeable.
[6] S. Prt. No. 112-37, Vol II, at 432 (2012).
[7] This figure was disclosed in the company's 2012 10-K filing, *available at* http://investors.cci.edu/secfiling.cfm?filingID=1047469-12-8511.

discrepancy is significant, and that "default management" tactics are having a substantial impact on cohort default rates.

Manipulation of cohort default rates evades accountability for poor outcomes, hurts students who may not benefit from one-size-fits-all "cures," and misleads prospective students about their chances of securing gainful employment. Prospective students are entitled to disclosures that indicate their *actual* likelihood of paying back their loans, without the distorting effect of default management tactics. Separated students, meanwhile, do not always benefit from forbearances or deferments; some would be better off enrolling in income-based repayment or other alternatives. Students need financial counseling that places their interests first, not the financial interests of for-profit schools. Accordingly, we believe it is vital that the Department address this issue in its upcoming rulemaking.

Institutional Loans

The Department Should Define "Institutional Loans" and Require that Schools Disclose Their Default Rates

As discussed above and in comments our Office recently submitted to the Consumer Financial Protection Bureau,[8] institutional loans undermine the Department's efforts around both cohort default rates and the 90/10 rule ("90/10").[9] We believe that many players in the for-profit school industry attempt to comply with 90/10 by setting their tuition such that no more than 90 percent of the cost will be covered by federal aid, thus creating a "gap" and leaving students with no choice but to take out private loans.[10] Until 2008, this funding gap was filled by private lenders, but after the economic crash these lenders exited the market. For-profit schools then began issuing their own loans, so-called institutional loans, to fill the gap. Although these loans may lose money for the schools, they serve the vital purpose of contributing to the ten percent non-federal revenue that the Department requires, which ensures that the schools retain access to the federal revenue on which they principally rely.[11]

Institutional loans pose a number of problems for students. They frequently carry high interest rates, binding arbitration provisions, and mandatory in-school payments. Many students do not realize that these loans are ultimately purchased by their school, and are surprised when they are

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[8] CFPB-2013-0004-3812, *available at* http://www.regulations.gov/#!documentDetail;D=CFPB-2013-0004-3812

[9] The rule appears in section 487(a) of the Higher Education Act of 1965, 20 USC §1094(a)(24):

> In the case of a proprietary institution of higher education (as defined in section 1002(b) of this title), such institution will derive not less than ten percent of such institution's revenues from sources other than funds provided under this subchapter and part C of subchapter I of chapter 34 of title 42, as calculated in accordance with subsection (d)(1), or will be subject to the sanctions described in subsection (d)(2).

[10] At least one for-profit school has admitted that it has raised tuition in order to create a funding gap. *See* Goldie Blumenstyk, *Colleges Scramble to Avoid Violating Federal Law*, The Chronicle of Higher Education (April 2, 2011), *available at* http://chronicle.com/article/Colleges-Scramble-to-Avoid/126986/

[11] More background is available in a report by the National Consumer Law Center. Deanne Loonin, *Piling it On: The Growth of Proprietary School Loans and the Consequences for Students*, National Consumer Law Center (January 2011), *available at* http://www.studentloanborrowerassistance.org/blogs/wp-content/www.studentloanborrowerassistance.org/uploads/File/proprietary-schools-loans.pdf

pulled out of class, denied externships, and even denied transcripts or diplomas if they do not make timely in-school payments. In fact, we have found that at one major for-profit school, financial aid officers are given bonuses for high collection rates, and are encouraged to review payment history before diplomas or transcripts are distributed.

Unfortunately, schools set up complex financial arrangements with third-party lenders to comply with 90/10 and conceal the fact that they own or will ultimately purchase the loans being issued to their students. It is essential, therefore, that the Department draft a clear definition of institutional loans: if schools have any direct financial interest in a loan's repayment, that loan should be considered institutional. And if students are to be offered institutional loans, they should be informed of this fact and also of the consequences if they fail to make timely payments.

As discussed above, we are also concerned by schools' lack of transparency concerning default rates on institutional loans. The only information available publically is accounting figures disclosed to investors by publically-owned for-profit schools. These figures suggest a default rate of over 50 percent, and prospective students at for-profit schools should be entitled to at least the same information as investors in for-profit schools. It is the students who are taking out the loans and the students, ultimately, who will be the most harmed if they default. Schools should disclose to students the default rates on institutional loans in a clear, transparent way, possibly according to the same measure with which they calculate cohort default rates on federal loans.

90/10 Manipulation Through Disbursement Delays

Career Schools Should Not Be Able to Delay Disbursement of Title IV Funds in Order to Manipulate 90/10 Accounting

Issuance of institutional loans is not the only way in which schools circumvent 90/10. Evidence demonstrates that certain schools delay disbursement of Title IV funds to students to shift federal revenue to the next fiscal year. For example, in a recent public filing, Career Education Corporation admitted that it planned to "delay[] until the first quarter of 2013 the disbursement and subsequent receipt of up to $25.0 million of Title IV funds."[12] The HELP Committee also found these practices in its investigation of the company, including an e-mail from an executive that instructed employees to delay stipend disbursements due to the "impact on the 90/10 calculations" but to inform students that the delay was "due to the influx of requests."[13] We believe that other for-profit schools employ similar tactics.

These practices harm students and contravene Federal Student Aid guidelines. Disbursement delays harm students who may be relying on student loans to pay the rent, feed their families, and otherwise meet everyday living expenses. Furthermore, the Department's Federal Student Aid Handbook specifically states that "FSA funds must be provided to students in a timely

[12] Career Education Corporation, Form 10-Q, July 31, 2012. *Available at* http://www.sec.gov/Archives/edgar/data/1046568/000119312512325966/d358572d10q.htm.

[13] S. Prt. No. 112-37, Vol II, at 349 (2012) (quoting the e-mail).

manner to best assist them in paying their educational expenses."[14] Based on schools' professed violations of these guidelines, we believe that formal rulemaking is required to address this issue. We encourage the Department, therefore, to promulgate rules that protect students and the integrity of 90/10 by prohibiting untimely disbursements unless requested by students.

III. Conclusion

The Office of the Illinois Attorney General appreciates this opportunity to comment on an area of great importance to the consumers we are charged with protecting. We hope that the Department finds our comments useful, and we look forward to remaining engaged in the rulemaking process.

Sincerely,

Susan Ellis
Chief
Consumer Fraud Bureau

[14] U.S. Dep't Of Educ., Fed. Student Aid Handbook, *Academic Calendar Payment Periods and Disbursements—Calculating Awards and Packages 2012-13*; Vol. 3 at 22. *Available at* http://ifap.ed.gov/fsahandbook/attachments/Vol3Ch11213Jun14.pdf.